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April 22, 2003

File: 4001.002282

CERTIFICATE OF MAILING
37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date below:

April 22, 2003

Date

Shelley P.M. Fussey

Assistant Commissioner for Patents
Washington, DC 20231

RE: *U.S. Application Serial No. 09/351,862; Entitled "Cancer Treatment Kits Using Antibodies to Aminophospholipids"; By Thorpe and Ran; Client Ref.: UTSD:549--1*

Sir:

Enclosed for filing in the above-referenced patent application is:

- (1) An Amendment; and Response to the Third and Prematurely Final Office Action dated October 22, 2002, with Exhibit A;
- (2) A Request to Withdraw Finality of Third Office Action Under MPEP 706.07(d);
- (3) A Notice of Appeal from the Primary Examiner to the Board of Patent Appeals and Interferences, with a Request for Refund of the Notice of Appeal fee as unnecessary in light of the premature finality;
- (4) A Request for an Extension of Time of three months, to and including April 22, 2003 (a refund of the extension fee is not requested);

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- (5) A check in the amount of \$625.00 to cover the Notice of Appeal fee (\$160.00, refund requested) and a three month extension of time fee (\$465.00); and
- (6) A postcard listing these materials; please date stamp and return the postcard evidencing receipt of these materials.

If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Assistant Commissioner is authorized to deduct or credit said fees from or to Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/4001.002282.

Respectfully submitted,



23720

PATENT TRADEMARK OFFICE

A handwritten signature in black ink, appearing to read "Shelley P.M. Fussey".

Shelley P.M. Fussey, Ph.D.
Reg. No. 39,458
Patent Agent

Encls.



EXAMINING GROUP 1617
EXPEDITED AFTER-FINAL PROCEDURE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Philip E. Thorpe and Sophia Ran

Serial No.: 09/351,862

Filed: July 12, 1999

For: CANCER TREATMENT KITS USING
ANTIBODIES TO
AMINOPHOSPHOLIPIDS

Group Art Unit: 1617

Examiner: Sharareh, S.

Atty. Dkt. No.: 4001.002282

CERTIFICATE OF MAILING
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April 22, 2003

Date


Shelley P.M. Fussey

**REQUEST TO WITHDRAW FINALITY
OF THIRD OFFICE ACTION UNDER MPEP 706.07(d)**

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicants respectfully request that the holding of finality set forth in the third and originally Final Official Action ("the Third Action") dated October 22, 2002 be withdrawn in accordance with MPEP 706.07(d). The Third Action offered no reasoning to support the holding of finality. The finality of the Third Action was premature, as the Action entered a new ground of rejection against several claims, not necessitated by Applicants' amendment or untimely submission of references. Finality is therefore improper and should be withdrawn.

Prior to the Second Official Action, claims 1-30 and 34-42 were pending. The Second Action rejected claims 23-29, 34 and 35 under 35 U.S.C. § 103(a) as allegedly being legally obvious over the Schroit, Gimbrone and Umeda references in combination. Applicants submitted a response on the merits, rebutting the § 103(a) rejection over Schroit, Gimbrone and Umeda in the remarks section, amending claims 1, 30, 34, and 38 and adding claim 43.

The third and originally Final Official Action rejects claims 1, 3-12, 14, 19-29, 34, 35 and 39-43 under § 103(a) over Schroit, Gimbrone and Umeda. The Third Action offers no reasoning to support the holding of finality (which is itself contrary to proper procedure). Finality is premature, as the § 103(a) rejection in the Third Action is newly applied to several non-amended claims.

In detail, the § 103(a) rejection over Schroit, Gimbrone and Umeda in the Second Action was applied only to claims 23-29, 34 and 35. The Third Action rejected claims 1, 3-12, 14, 19-29, 34, 35 and 39-43 under § 103(a) over Schroit, Gimbrone and Umeda. The rejection is thus newly applied to each of claims 1, 3-12, 14, 19-22 and 39-43. Of the newly rejected claims, only claims 1 and 38 had been amended and claim 43 added. Therefore, the Third Action improperly entered a new ground of rejection against pending and unamended claims 3-12, 14, 19-22 and 39-42, of which claims 39-42 are unamended, independent claims.

The third Action clearly entered a new ground of rejection against claims 3-12, 14, 19-22 and 39-42, each pending before the Second Action, which was not necessitated by Applicants' amendment or untimely submission of references. Finality is therefore premature and Applicants respectfully request that the holding of finality be withdrawn.

According to MPEP 706.07(d), the present document need only be a Request and not a Petition (although Applicants reserve the right to challenge any adverse holding by petitioning the Group Director under MPEP 706.07(c) and 1002.02(c)).

No fees are due for a Request under MPEP 706.07(d). However, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason, the Assistant Commissioner is authorized to deduct said fees from Williams, Morgan & Amerson, P.C. Deposit Account No. 50-0786/4001.002282. Applicants reserve the right to request a refund for any fees deducted in connection with this Request, in addition to a refund for the Notice of Appeal fee, which is not required in light of the premature finality.

Should the Office have any questions, a telephone call to the undersigned Applicants' representative is earnestly solicited.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "SF".

Shelley P.M. Fussey, Ph.D.
Reg. No. 39,458
Agent for Applicant

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(713) 934-4079

Date: April 22, 2003